

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 305 - LICENSING REQUIREMENTS, ANNUAL REPORTING, ENFORCEMENT AND CONSUMER PROTECTION PROVISIONS FOR COMPETITIVE PROVISION OF ELECTRICITY

SUMMARY: This Chapter establishes licensing requirements for competitive electricity providers, which include marketers, brokers and aggregators. The Chapter includes procedural rules governing application for licensing, revocation and enforcement, and annual reporting provisions. The Chapter also establishes consumer protection rules applicable to competitive electricity providers.

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§ 1 GENERAL PROVISIONS AND DEFINITIONS

A. Scope of Rule. This Chapter applies to competitive electricity providers who must be licensed to sell electricity at retail in Maine. Competitive electricity providers include marketers, brokers, aggregators, and any entities selling electricity at retail. This Chapter establishes licensing criteria and procedures, annual reporting requirements, enforcement provisions, and consumer protections standards.

B. Definitions. For the purposes of this Chapter, the following terms have the following meanings:

1. Affiliated Interest. "Affiliated interest" means:
 - a. Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of an applicant or licensee;
 - b. Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (a);
 - c. Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an applicant or licensee;
 - d. Any person, or group of persons acting in concert, which exercises substantial influence over the policies and actions of an applicant or licensee, provided that the person or group of persons beneficially owns more than 3% of the applicant or licensee's voting securities.
2. Aggregate. "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.
3. Aggregator. "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.
4. Applicant. "Applicant" means any entity that has filed an application for a license as a competitive electricity provider.
5. Broker. "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.

6. Commission. "Commission" means the Maine Public Utilities Commission.

7. Competitive Electricity Provider. "Competitive electricity provider" means a marketer, broker, aggregator, and any entity selling electricity to the public at retail.

8. Complaint. "Complaint" means a grievance of a customer about the application of any customer protection provision of this Chapter by a competitive electricity provider.

9. Customer. "Customer" means any person who has applied for, been accepted or is receiving generation service from a competitive electricity provider for retail use. This term includes an applicant for generation services when the context addresses the process of application for generation service in this Chapter.

10. Enroll. "Enroll" means the assignment of a customer to a competitive electricity provider pursuant to Chapter 322 of the Commission's rules.

11. Entity. "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

12. Generation Service. "Generation service" means the provision of electric power to a retail customer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.

13. ISO-NE. "ISO-NE" means the Independent System Operator of the New England bulk power system.

14. Large General Service Customer. "Large general service customer" means a customer that is not a residential customer and has a demand greater than 100 kW.

15. Maritimes Control Area. "Maritimes control area" means the area in which the New Brunswick Power Corporation operates the Maritimes bulk power system.

16. Marketer. "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

17. NEPOOL. "NEPOOL" means the New England Power Pool and its successors.

18. Northern Maine. "Northern Maine" means the area of Maine that is located in the Maritimes control area.

19. Residential Customer. "Residential customer" means a customer receiving electricity service at a dwelling for personal, family or household purposes

under the terms and conditions applicable to the customer's transmission and distribution utility.

20. Small General Service Customer. "Small general service customer" means a customer that is not a residential customer and has a demand of 100 kW or less.

21. Transmission and Distribution Utility. "Transmission and distribution utility" means a person, its lessees, trustees, receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State.

§ 2 LICENSING REQUIREMENTS

A. Entities Subject to Licensing Requirements

1. Competitive Providers. All competitive electricity providers, including aggregators, brokers and marketers must be licensed by the Commission. Beginning 75 calendar days after the effective date of this Chapter, no entity shall contract or offer to contract to provide generation service, enroll customers, provide generation service, or arrange for a contract for the provision of generation service without having obtained a license from the Commission.

2. Transmission and Distribution Utilities. This section is not applicable to transmission and distribution utilities that arrange for standard offer service to their customers pursuant to Chapter 301 of the Commission's rules.

B. Application Requirements for Competitive Providers

1. Evidence of Financial Capability and Security Requirements

a. Security Requirement

(i) A license will not be issued or remain in force until the applicant or licensee furnishes a surety bond or letter of credit as specified in this paragraph. The surety bond or letter of credit requirement is not applicable to aggregators and brokers, or competitive electric providers that offer service only to customers with a demand greater than 100 kilowatts.

(ii) The initial security level shall be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business anticipated to be conducted in Maine upon submission of evidence in support of the modification. A request for modification of this initial security level may be made in conjunction with the filing of the license application. Those applicants whose retail sales will be restricted exclusively to customers with a demand of greater than 100 kilowatts must submit evidence of their financial capability, but are not required to meet those security requirement unless the Commission so requires based on a review of the evidence of financial capability.

(iii) The Commission will modify the security level for each licensee annually based on the annual filing required by subsection D. The security level will be for an amount equal to 10 percent of the licensee's annual revenues from sales of generation services to retail customers with a demand of 100 kilowatts or less in Maine. Annual revenues for purposes of this provision do not include revenues from standard offer service.

(iv) Security may be provided through a surety bond issued by an insurer authorized to do business in the State of Maine or an irrevocable standby letter of credit from a financial institution authorized to do business in Maine. A provider furnishing either a surety bond or an irrevocable standby letter of credit as security shall file with the Commission the surety bond or an irrevocable standby letter of credit in a form approved by the Commission, copies of any agreements or other documents establishing the terms and conditions of the provider's reimbursement obligations to the insurer or financial institution issuing the surety bond or letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the provider's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the provider, the Commission or the Treasurer of State.

(v) An irrevocable standby letter of credit that has been issued by an authorized financial institution must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the irrevocable standby letter of credit; that the financial institution will notify the Commission 60 days in advance of expiration or cancellation of the letter of credit; to the extent not inconsistent with state law, that the letter of credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits; that if any

legal proceedings are initiated with respect to the payment of the letter of credit, those proceedings are subject to the State's courts and law; and that any draft presented by the Commission will be promptly honored by the financial institution. If the Commission is notified by the issuing financial institution that the irrevocable standby letter of credit will expire in 60 days or less and that the irrevocable standby letter of credit was not replaced within 30 days after that notice to the Commission by other eligible security of equal value approved by the Commission, then the financial institution must remit within 15 days the full amount of the irrevocable letter of credit to the Commission to be held by the Treasurer of State. Any proceeds from a draw on the irrevocable standby letter of credit must be held until the Commission directs the Treasurer of State to distribute the proceeds in accordance with this rule.

(vi) A surety bond that has been issued by an authorized insurer and accepted by the Commission must include the following language: that the surety bond is continuous and subject to nonrenewal only upon at least 60 days notice to the Commission; that the surety bond covers payment of all present and future obligations, as identified by the Commission under this rule, of the provider that occurred while the surety bond was in force; that the surety bond will be held until all payments secured by the surety bond have been made or until the surety bond has been replaced by other eligible security approved by the Commission; and that payments under the surety bond are due to the party identified by the Commission to receive payment within 30 days after notice to the insurer by the Commission.

(vii) The Commission may order the bond proceeds or proceeds of the irrevocable letter of credit to be paid: to individual customers for a refund of security deposits or advance payments held by the provider; to individual customers for restitution of amounts paid in error, by mistake or unlawfully obtained; or to the Commission, for payment to satisfy payment of fines or other penalties ordered by the Commission pursuant to section 3 of this Chapter or other rules otherwise applicable to the provider pursuant to Title 35-A M.R.S.A., Chapter 32, Electric Industry Restructuring.

(viii) The bond or letter of credit shall include the Maine Public Utilities Commission as the sole beneficiary and state the purpose of the bond or letter of credit as follows:

This surety bond or letter of credit is written in accordance with Chapter 305 of the Commission's rules to assure compliance with applicable provisions of this Chapter and the rules and regulations of the Maine Public Utilities Commission by the principal as a licensed electric generation provider, and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements. The terms of this security shall be governed by the laws of the State of Maine. The proceeds of this bond or letter of credit shall be paid or disbursed as directed by the Maine Public Utilities Commission.

(ix) Licensee liability for unreasonable service, or for violations of state law and Commission orders and rules is not limited by these security requirements.

b. Aggregators and brokers. Aggregators and brokers are not required to provide a security instrument, but must file other evidence of their professional responsibility, and, if the entity proposes to hold retail customer funds, financial capability to engage in its proposed business. Such evidence may consist of an annual report, balance sheet and statement of liabilities and assets, evidence of prior business experience, errors and omissions insurance, and other evidence of professional responsibility and financial stability.

c. Standard offer service. Applicants that will provide only standard offer service are not required to provide a security instrument pursuant to this subsection, but must comply with the security requirements contained in the Commission's standard offer rule, Chapter 301.

d. Additional financial information. The applicant shall also provide the following information:

(i) Whether any of the following have filed for bankruptcy within the past 24 months: the applicant; any entity that is a control person of the applicant; any entity for which the applicant is a control person; any entity under common control with the applicant; and any entity for which a control person of the applicant served as a control person at the time of the bankruptcy filing. For purposes of this provision, a control person is any person who serves as an officer or director of, or who exercises similar authority over, an entity or who possesses, directly or indirectly, voting power over 10% or more of the voting securities of the entity.

(ii) A copy of the documents which demonstrate the type of organization of the applicant (sole proprietor, corporation, partnership, association, or other business form) and a copy of its by-laws;

(iii) The state(s) in which the applicant is incorporated or otherwise registered or licensed to do business and a copy of its registration or license number, where applicable;

(iv) A copy of any FERC approval as a Power Marketer or date and docket number of the application to FERC, if applicable; and

(v) The name, address and title of each officer and director, partner, or other similar officer.

2. Evidence of Technical Capability

a. Arrangements with utilities. An applicant must demonstrate that it has the technical ability to enter any necessary interconnection arrangements or other required contracts with one or more Maine utilities. An applicant that has not yet entered any required interconnection arrangements or contracts may receive a license, but shall not act to enroll customers or provide generation service until all required contracts have been executed consistent with Commission rules .

b. Compliance with regional requirements

(i) An applicant must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of NEPOOL and ISO-NE. An applicant that will provide retail generation service in northern Maine must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable technical requirements of the Maritimes control area.

(ii) An applicant must document that it is a NEPOOL participant or will meet its transaction requirements through a contractual arrangement with a NEPOOL participant. An applicant that will only provide retail generation service in northern Maine does not have to comply with this provision.

c. Aggregators and brokers. Aggregators and brokers are not required to comply with the requirements of subparagraphs a and b. Aggregators and brokers must submit relevant evidence of technical fitness to conduct their proposed business.

3. Disclosure of Enforcement Proceedings and Customer Complaints.

a. Enforcement proceedings. An applicant must disclose all enforcement proceedings with which it has been associated according to the following:

(i) Types of actions - all civil legal actions pending or concluded within the past 12 months that relate to or arise out of the sale of electricity, business fraud, or unfair or deceptive sales practices, all criminal prosecutions or convictions within the past 6 years that relate to or arise out of the sale of electricity, business fraud, or unfair or deceptive sales practices, and all felony prosecutions or convictions within the past 6 years.

(ii) Entities covered - all actions of the type specified in subparagraph (i) against the applicant; any entity for which the applicant is a control person; any control person of the applicant; any entity under common control with the applicant; or any entity for which a control person of the applicant served as a control person at the time of the conduct that was the basis for the civil action or criminal prosecution. For purposes of this provision, a control person is any person who serves as an officer or director of, or who exercises similar authority over, an entity or who

possesses, directly or indirectly, voting power over 10% or more of the voting securities of the entity.

b. Customer complaints. An applicant must disclose the number of customer complaints filed with the state licensing agency for the retail sale of electricity, the Attorney General's office or other governmental consumer protection agencies for the most recent calendar year for which data is available in every state in which it has conducted business relating to the sale of generation service. At the applicant's discretion, this information may be accompanied by a complaint ratio that relates the volume of complaints, informal or formal, to the number of customers served by the applicant. The applicant must identify the agency that is the source of the complaint data.

4. Evidence of Ability to Satisfy Portfolio Requirement. An applicant must submit evidence of its ability to satisfy the renewable resource portfolio requirement under 35-A M.R.S.A. § 3210, consistent with the provisions of the Commission's portfolio requirement reporting rules, Chapter 311. This provision is not applicable to aggregators and brokers.

5. Disclosure of Affiliates. An applicant must disclose the names and addresses of all affiliated interests engaged in the retail sale of electricity in the United States or Canada. An applicant may submit a copy of its most recent corporate annual report in compliance with this provision if the annual report contains the required information. At the request of the Commission, the applicant shall submit further information on the corporate structure of the applicant's parent corporation.

6. Ability to Comply With Consumer Protection Requirements. An applicant that will sell generation service to retail customers with a demand of 100 kilowatts or less must file evidence demonstrating the applicant's ability to comply with the Commission's applicable consumer protection requirements as set forth in this Chapter or other consumer protection requirements made applicable to the applicant pursuant to state law and Title 35-A, M.R.S.A., Chapter 32. The applicant may, but is not required to, rely on the following type of information to meet this requirement: prior business experience in energy or other service-related industries; staffing and staff training commitments; arrangements for customer education and information service; customer satisfaction survey results; government agency reports; and complaint statistics compiled by any state or local government agency.

7. Other Requirements. An applicant must provide the following information:

- a. Legal name and name(s) under which the applicant will do business in Maine;
- b. Business street and mailing address;
- c. Location and agent for service of process in Maine;

d. Location, if any, of any office available to the general public or Maine customers of the applicant;

e. Contact person, address and telephone number for regulatory matters and, if different, for customer complaints;

f. A generic list of the products and services that will be marketed in Maine, the customer class(es) that will be served (residential, commercial or industrial), and the transmission and distribution utility service territories in which [the applicant will do business](#).

g. A list of all jurisdictions in which the applicant or any affiliated interest of the applicant is engaged or has been engaged within the prior 6 years in the sale of generation services.

h. A list of all jurisdictions in which the applicant or any affiliated interest of the applicant has applied for a license or has otherwise sought the authority to engage in the sale of generation service, and the disposition of the application.

8. Jurisdiction. By obtaining a license to act as a competitive electricity provider in Maine, the licensee agrees:

a. To submit to the jurisdiction of the courts of the State of Maine and the Maine Public Utilities Commission;

b. That all legal proceedings relating to disputes under any contract for generation service to customers in Maine will be maintained in Maine courts or before Maine administrative agencies; and

c. That all contracts for generation service to consumers in Maine with a demand of 100 kW or less will be interpreted according to Maine law.

C. Licensing Procedures

1. Scope. These procedures apply to the application for a competitive electricity provider license before the Commission.

2. Form. An application for a license must be made on the form provided by the Commission, notarized and signed by two officers of the applicant. A copy of the application form can be obtained from the Commission's Administrative Director. The application form is available on the Commission's Internet website.

3. Number of Copies; Service. Each applicant must file an original application, with two copies and a copy in an electronic format as specified by the Commission. A copy of the completed application with supporting documentation must be served on the Office of the Public Advocate.

4. Material Change in Application Information. The applicant shall inform the Commission of any material change in the information provided in the application during the pendency of the application process.

5. Fees. Each license applicant shall pay a fee of \$100 to the Commission. Fees collected by the Commission under this provision must be deposited in the Public Utilities Commission Reimbursement Fund.

6. Notice of Application. The Commission will place notification of pending and approved applications on its Internet website.

7. Commission Review. The Commission will review applications and may request additional information from applicants. The Commission will either issue a license, deny the application, or initiate a formal investigation of the application within 30 calendar days of submission of a complete application. If additional time is required for the initial review, the Administrative Director may extend the review period for an additional 30 calendar days. In the event the Commission initiates a formal investigation, it shall provide notice to interested persons.

8. Issuance Criteria. The Commission will issue a license unless it finds that the applicant has not complied with all applicable licensing requirements of this Chapter, that the applicant does not have the financial and technical capability to conduct its business, or that sufficient reason exists to conclude that issuance of a license is not in the public interest.

9. Term of License. Licenses are valid until revoked by the Commission or abandoned by the applicant.

10. Transfer of License. A license shall not be transferred without prior Commission approval. Approval for transfer shall be requested by filing a request in writing accompanied by a completed license application from the transferee. The Commission may order the licensee to notify its customers of the license transfer.

11. Abandonment of License. A licensee shall not abandon service without providing at least 30 days written notice to the Commission, the licensee's customers with a demand of 100 kilowatts or less and the affected transmission and distribution utilities.

12. Accuracy of Information. Any applicant who knowingly submits misleading, incomplete or inaccurate information may be penalized in accordance with perjury statutes and pursuant to 35-A M.R.S.A. § 3203 and the provisions of this Chapter.

D. Annual Reporting

1. Information. As a condition of licensing, each competitive electricity provider must file an annual report on or before May 1 of each year, for the previous calendar year. The annual report shall contain the following information:

- a. Average prices. Average retail sale prices in Maine broken down by residential, small general service, and large general service customers and by transmission and distribution service territories; for each category, the average retail sale price is the total revenue divided by the total kilowatt-hour sales;
 - b. Revenues. Total revenues from kilowatt-hour sales in Maine to customers with a demand of 100 kilowatt or less, other than revenues from standard offer service;
 - c. Customer complaints. Summary of customer complaints received and resolved by the competitive electricity provider on a form provided by the Commission;
 - d. Enforcement actions. Identification of any formal enforcement action initiated against or concluded against the licensee or an affiliated interest engaged in the retail sale of electricity in the United States or Canada by any federal, state or local agency with respect to the sale of electricity at retail;
 - e. Ownership or control. Changes in the licensee's ownership or control;
 - f. Information disclosure. The information required to be provided annually pursuant to the Commission's information disclosure rule, Chapter 306;
 - g. Portfolio requirement. The information required to be provided annually pursuant to the Commission's renewable resource portfolio requirement rule, Chapter 311; and
 - h. Other information. Other information that the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A, Chapter 32.
2. Confidentiality. The [Commission](#) may [subject any](#) information required by this Chapter to appropriate protective orders.
 3. Aggregators and Brokers. Except for subparagraph (c) and (d), aggregators and brokers are not required to comply with the annual reporting requirement of this subsection. The Commission may at any time require aggregators and brokers to provide any information the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A, Chapter 32.
 4. Standard Offer Providers. Except for subparagraph (f) and (g), standard offer providers are not required to comply with the annual reporting requirement of this subsection. The Commission may at any time require standard offer providers to provide any information the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A, Chapter 32.

§ 3 SANCTIONS AND ENFORCEMENT

A. Sanctions. Competitive electricity providers are subject to sanctions for violations of applicable provisions of Chapter 32 of Title 35-A, and Commission rules or orders. Sanctions may be imposed following a hearing before the Commission in conformance with 5 M.R.S.A. Chapter 375, subchapter IV (Maine Administrative Procedures Act) and Chapter 110 of the Commission's rules. The following sanctions may be imposed:

1. Penalties. In an adjudicatory proceeding, the Commission may impose a penalty not to exceed \$5,000 for each violation for each day that the violation persists. In determining the amount of the penalty, the Commission shall consider the magnitude of the penalty relative to the size of the competitive electricity provider's business, the nature of the violation, and the good faith attempts by the competitive electricity provider to achieve compliance after notification of a violation. Penalties collected by the Commission under this provision must be deposited in the Public Utilities Commission Reimbursement Fund.

2. Cease and Desist Orders

a. Hearing. The Commission may issue a cease and desist order following an adjudicatory hearing, if the Commission finds that any competitive electricity provider has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the Commission or any lawful order issued by the Commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

b. Emergency. The Commission may issue a cease and desist order in an emergency, without hearing or notice, if the Commission receives a written, verified complaint or affidavit showing that a competitive electricity provider is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the Commission or until stayed by a court of competent jurisdiction. In a subsequent hearing, the Commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the Commission.

3. Restitution. The Commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this subsection.

4. Revocation; Suspension. The Commission may revoke or suspend the license of a competitive electricity provider as stated below. At its option, the Commission may suspend only a competitive electricity provider's authority to enroll new customers.

a. For any cause for which issuance of the license could have been denied had it then existed or been known to the Commission;

b. For a violation or material noncompliance with any applicable provision of any law or rule administered or enforced by the Commission or any lawful order issued by the Commission;

c. For obtaining or attempting to obtain a license through misrepresentation, failure to disclose a material fact required to be disclosed in the application, or fraud; or

d. For the use of fraudulent, coercive, or deceptive practices, or misuse of customer funds with respect to the provision of generation service.

5. Other. The Commission may impose any other sanction authorized by law that it determines appropriate taking into account the facts and circumstances that resulted in the violation.

6. Waiver. The Commission may waive the imposition of sanctions upon a showing that the violation was immaterial, unintentional, or that the competitive

electricity provider acted in good faith to comply with all applicable statutory and regulatory requirements.

B. Enforcement

1. Court action. The Commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the Commission pursuant to this Chapter.

2. Notice to Attorney General. If the Commission has reason to believe that any competitive electricity provider has violated any provision of law for which criminal prosecution is provided or any antitrust law of this State or the United States, the Commission shall notify the Attorney General.

§ 4 CUSTOMER PROTECTION

A. Applicability

1. Customers. The provisions of this section apply only to service to residential consumers and small commercial consumers. For purposes of this section, residential consumer means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility, and small commercial consumer means, in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge or, in the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less. The customer's status shall be determined at the time of enrollment. The transmission and distribution utility shall cooperate with the provider in the identification of customers who may be subject to the provisions of this section.

2. Standard Offer Service. Unless otherwise indicated, the provisions of this section do not apply to standard offer providers.

3. Aggregator and Brokers. The provision of this section do not apply to aggregators and brokers.

4. Representatives or Agents. For purposes of this section, the obligations and requirements of a competitive electricity provider shall apply to representatives or agents that act on behalf of a competitive provider. Competitive electricity providers are responsible for violations of the provisions of this section by representatives or agents acting on their behalf.

5. Customer Waivers. Any waiver of the consumer protections provided to customers in this Chapter shall be null and void.

B. Provision of Information to Customers

1. Terms of Service Document

a. Initiation of service. Each competitive electricity provider must prepare and issue a document entitled "Terms of Service" as described in this subsection within 30 calendar days of contracting for service with a customer. The Terms of Service document shall be in plain language and printed in legible type. A competitive electricity provider shall not enroll a customer until the Terms of Service document has been sent to the customer and the customer's statutory right of rescission has expired as set forth in subsection C. Competitive electricity providers must maintain sufficient records, either in writing or electronically, to demonstrate compliance with the issuance of the Terms of Service document, including the customer's right of rescission, prior to enrolling the customer.

b. Annual notice. Each competitive electricity provider must notify its customers at least once annually of their right to obtain a terms of service document. This notice may be issued with the customer's bill or in a separate notice. Upon request, the provider shall issue its Terms of Service document to any customer eligible for the service in question.

c. Content. The Terms of Service document shall contain the information specified in the Commission's rule on information disclosure requirements, Chapter 306.

2. Disclosure Label. Each competitive electricity provider must provide to customers a disclosure label that complies with the provisions of the Commission's rule on information disclosure requirements, Chapter 306, at the time it provides the Term of Service document pursuant to subsection (B)(1)(a) of this Chapter.

3. Written Solicitations. If written solicitations by a competitive electricity provider contain the Terms of Service document, any tear-off portion that is returned by the customer to obtain generation service must allow the customer to retain the Terms of Service document.

C. Right of Rescission

1. General. Competitive electricity providers must provide a five day right of rescission to every customer. The right of rescission, and how to exercise this right, shall be stated in the customer's terms of service document.

2. Oral Agreement. Competitive electricity providers must orally notify customers of their right of rescission at the time the customer orally agrees to purchase generation services from the provider.

3. Exercise of Right of Rescission. A prospective customer may rescind her or his selection of a competitive provider orally, in writing or by commercially accepted electronic means. A customer's rescission shall be effective if received by the

provider no later than eight (8) calendar days after the provider deposits the Terms of Service document in the U.S. mail system for first class delivery to the customer or no later than five (5) calendar days after the provider delivers the document personally to the customer or sends the document by electronic means to a customer who has agreed to receive the disclosures from the provider by electronic means.

4. Waiting Period. The competitive electricity provider shall wait eight (8) calendar days after the provider mails the Terms of Service document before acting to enroll a customer..

5. Rescission Complaints. It is the obligation of the competitive electricity provider to maintain sufficient evidence of the notification of the right of rescission, the timing requirements of this subsection, whether the customer rescinded in writing, electronically or orally, and when the transmission and distribution utility was notified of the new customer's status.

D. Verification of Affirmative Customer Choice

1. General. Each competitive electricity provider must obtain verification that each customer choosing that provider has affirmatively chosen such entity. No provider may enroll a customer without first obtaining evidence of the affirmative choice from the customer. The provider must retain this evidence for at least 12 months from the date of the initiation of service.

2. Affirmative Choice. For the purposes of this subsection, the customer's affirmative choice may be evidenced by a customer-signed letter of authorization or third-party verification.

a. Letter of authorization. For the purposes of this subsection, the term "letter of authorization" means an easily separable document whose sole purpose is to authorize a competitive electricity provider to initiate generation service for a customer or represent the customer for the purposes of selecting a provider on behalf of the customer. The letter of authorization must be signed and dated by the customer and must not be combined with a check, prize or other document which intends to confer any benefit on the customer as a result of the customer's selection of the provider. The document may be transmitted electronically by the customer to the provider if the provider maintains a security system sufficient to identify the customer and prevent fraudulent use of the letter of authorization by any person.

b. Third-party verification. For the purposes of this section, the term "third-party verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the customer's oral authorization to change to a new provider. The authorization must include appropriate verification data, such as the customer's date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

3. Complaint Procedure; Enforcement

a. Complaint. Any person may file a complaint with the Commission that a competitive electricity provider has engaged in slamming. For purposes of this paragraph, slamming means the transfer to a new competitive electricity provider without the customer's authorization required by this subsection.

b. Timing. Within ten business days of filing the complaint, the Commission will request from the customer: a copy of the customer's bill or notice that included the information regarding the initiation of generation service; the name of the original provider; and any other information the Commission determines to be relevant. The Commission will request that the customer, within 15 business days of the Commission notification, respond to the Commission's request for information.

c. Request for information. The Commission will inform the transmission and distribution utility and original competitive electricity provider of the pending complaint and request that information relevant to the initiation of generation service be furnished; and

d. Request for evidence. The Commission will notify the new competitive electricity provider of the pending complaint and request evidence of the customer's affirmative choice to initiate generation service as provided for in this subsection, and any additional information the Commission determines to be relevant.

e. Provision of information. The transmission and distribution utility, the original competitive electricity provider and the new competitive electricity provider must respond to the Commission's request within 5 business days from the issuance of the requests.

f. Determination. Within 60 days after receiving evidence of the customer's affirmative choice and all relevant information, the Commission will determine if the customer authorized the new competitive electricity provider to initiate generation service.

g. Refunds. If the Commission or its Consumer Assistance Division determines that the new competitive electricity provider does not possess the required evidence of the customer's affirmative choice as provided for in this subsection and that the customer made an initial complaint within 75 days after the statement date of a bill containing charges from the new provider or notice indicating that the slamming has occurred, the Commission or its Consumer Assistance Division will require the new provider to refund to the customer, any charges already paid to the new provider and any reasonable expense the customer incurred in switching back to the original provider.

E. Minimum Service Period

Each competitive electricity provider must offer generation service to each of its customers for a minimum period of 30 days.

F. Minimum Notice of Changes in Material Terms and Conditions; Contract Renewal

Each competitive electricity provider must provide written notice to its customers between 30 and 60 calendar days in advance of a material change in the terms and conditions of the contract (such as those terms contained in the Terms of Service document). For purposes of this subsection, a material change includes the assignment or transfer of a customer to another provider. Customers must be notified between 30 and 60 calendar days prior to the end of their contractual term of service of either: the existence and operation of an automatic renewal provision of the contract term present in the customer's contract; or the need for the customer to affirmatively renew to retain service from the provider at the end of the contract term. The notices required by this section may be provided in the customer's bill or in a separate document issued with the customer's bill.

G. Cancellation of Service

Each competitive electricity provider must provide written notice to a customer at least 30 calendar days prior to cancellation of that customer's generation services contract due to a default in the contract terms by the customer.

1. Notice to Customer. Competitive electricity providers must provide the notice required by this subsection in a separate mailing from the customer's bill. The notice must include the following information:

- a. The telephone number and hours of the competitive electricity provider's consumer contact staff;
 - b. The reason for cancellation;
 - c. Steps the customer can take to avoid cancellation, if any;
- and
- d. Notice of the existence of other providers, including standard offer service.

2. Pre-Payment Meter. Competitive electricity providers shall not avoid compliance with the customer cancellation notice by installing a pre-payment meter or device at the customer's location that causes the customer's electricity to be automatically disconnected for the failure to pay in advance.

3. Standard Offer Service. A customer whose service from a competitive electricity provider is canceled and who does not select another competitive electricity provider shall receive service from the standard offer.

H. Generation Service Bills

1. Content. Each bill for competitive generation service, including standard offer service, must provide the following information on the customer's billing statement:

- a. Electricity consumption, including whether the consumption was based on actual recorded usage or estimated usage;
- b. The pricing structure under which the customer is being billed, as shown on the customer's Terms of Service document;
- c. The total charge for generation service for the current billing period;
- d. The actual cents per kWh charged to the customer for the customer's usage of electricity for the current billing period, calculated by dividing the total charge for generation service by the customer's usage for the current billing period;

- e. An itemized list of each service or product billed by the provider to the customer for the current billing period;
 - f. The amount of any payment or other credit applied to the customer's outstanding balance for generation service during the billing period;
 - g. The total amount in arrears owed by the customer;
 - h. The due date by which payment must be made to avoid late payment fees or other collection action by the provider; and
 - i. the total amount owed by the customer, including the amount in arrears for generation service and the amount owed for the current billing period.
2. Plain language. Each bill for generation service must use plain language.
3. Format. The bill format must include:
- a. Sufficient information so that the ordinary customer can understand the basic components of the bill;
 - b. Comparative usage information for the prior 12-month period or for the equivalent period 12 months ago, to the extent available;
 - c. Definitions of technical terms used in the bill; and
 - d. Sufficient separation between sections, type size and visual highlighting to make the bill uncluttered and easy to read.
4. Combined bill. If the customer's bill for generation service is combined on the same bill with regulated charges for transmission and distribution services, the charges associated with competitive services must be separately identified and disclosed as required in this subsection. The billing entity shall either provide generation service charges on a separate page from regulated charges or separate the generation service charges graphically from the rest of the bill.

I. Do-Not-Call List

The Commission will maintain or cause to be maintained a "Do-Not-Call" list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers. A customer will remain on the "Do-Not-Call" list for 5 years or until the customer affirmatively requests that she or he be removed from the list, whichever occurs sooner.

1. Prohibition. Competitive electricity providers are prohibited from telemarketing to customers whose names are on the "Do Not Call" list. A provider shall

be in compliance with this provision if the provider obtains the most recent version of the list on at least a monthly basis and prevents telemarketing calls to customers identified on the list. Any provider that violates this provision is subject to the sanctions contained in section 3 including license revocation.

2. Notice. Competitive electricity providers must include notice of the "Do Not Call" list in the Terms of Service document. The notice must explain what the "Do Not Call" list is and how a customer can request that he or she be added to or removed from that list.

J. Protection of Customer Information

Each competitive electricity provider, including standard offer providers, shall maintain the confidentiality of a customer's personal information, including name, address, telephone number, usage, and historic payment information. Such information shall not be released to any other entity (other than for the purposes of debt collection, credit reporting pursuant to state and federal law, or law enforcement agencies pursuant to lawful process) without the specific affirmative consent of the customer. Such consent may be obtained by means of either written authorization or independent third-party verification in the same manner as set forth in subsection D. A customer shall have the right to obtain a copy on request of their own usage, billing and payment history without charge from a provider at least once annually.

K. Unfair or Deceptive Practices

Each competitive electricity provider, including standard offer providers, is subject to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214 and related consumer protection statutes. Consumer complaints and investigations by the Commission concerning potential violations of the Maine Unfair Trade Practices Act and related statutes will be coordinated with the Department of Attorney General. The Commission may take into account actions by the Attorney General with respect to the competitive electricity provider's compliance with these laws in its determination of licensing applications, licensing revocation, transfer of licenses, and penalties and other enforcement activities. Any finding by an entity of competent jurisdiction that a competitive electricity provider violated either the Maine or Federal Unfair Trade Practices Act is deemed to be a violation of this subsection.

L. Excessive Collection Costs

A competitive electricity provider shall not seek to collect excessive collection costs from customers who are in default. For the purposes of this provision, "excessive" collection costs are those in excess of actual out-of-pocket expenses incurred by the provider, including reasonable attorney's fees and actual court costs.

M. Application for Service; Denial of Credit

1. Written procedures; prohibition on discrimination. Each competitive electricity provider must adopt written procedures to guide its employees and agents with respect to the evaluation of applications for service from prospective customers

and shall not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights under state or federal consumer protection laws.

2. Written denial of service. A provider who denies service to a consumer based on consumer-specific information obtained by the provider during the application process must inform the consumer in writing of the reason for the denial. This disclosure may be combined with any disclosures required by applicable federal or state law. This disclosure is not required when the provider notifies the customer orally that the customer is not located in a geographic area served by the provider, does not have the type of usage characteristics that is served by the provider, or is not part of a customer class served by the provider.

3. Customer complaint. A customer complaint relating to the denial of service pursuant to state or federal equal credit opportunity laws shall be coordinated with the Department of the Attorney General. Any finding by an entity of competent jurisdiction that a competitive electricity provider violated the Maine Human Rights Act 5 M.R.S.A. Chapter 337 or the Federal Equal Credit Opportunity Act, 15, U.S.C. §§ 1691-1691f is deemed to be a violation of this subsection.

N. Conducting Business with Unauthorized Entities

A competitive electricity provider may not facilitate or otherwise arrange for the sale of electricity to retail customers from an entity that is not licensed by the Commission.

O. Dispute Resolution

The Commission shall resolve disputes among competitive electricity providers and retail consumers of electricity regarding the provisions of this section according to the following procedures:

1. Provider Employee Available. Each competitive electricity provider must provide at least one employee (whose duties need not be limited to this obligation) during business hours to respond to questions and resolve complaints from customers and applicants, and to work with the Commission on complaint resolution.

2. Provider Investigation. When a competitive electricity provider becomes aware of a complaint by a customer or applicant, the provider must:

- a. investigate the complaint, preserving the record of the substance and results of the investigation;
- b. report the results of its investigation to the customer; and
- c. attempt in good faith to resolve the complaint.

3. Notification of Right to File a Complaint with the Consumer Assistance Division. If the competitive electricity provider cannot resolve the dispute with the customer after the procedures in paragraph 2 are completed, the provider must orally inform the customer of his or her right to file a complaint with the Commission's Consumer Assistance Division and of the toll free telephone number of the Commission.

4. Investigation by the Consumer Assistance Division; Appeal to the Commission. All complaints brought to the Consumer Assistance Division against a competitive electricity provider shall follow the procedures set forth in Chapter 81, sub-§§ 13(E) and (F) and Chapter 860, or successor provisions.

§ 5 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any of the requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purpose of this Chapter or Title 35-A. The Commission, the Director of [Technical Analysis](#), the Director of Consumer Assistance, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 2000-335 issued on May 1, 2000. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. §§ 104, 111 and 3203.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on May 11, 2000. It was filed with the Secretary of State on May 12, 2000 and will be effective on May 17, 2000.